

EN BANC

[G.R. No. 127485, July 19, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERNANDO RAMILLA Y RENTINO, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

FERNANDO RAMILLA Y RENTINO was charged on 10 July 1996 with raping ten-year old Crisanda Cabugza Calderon before the Regional Trial Court of Las Piñas,^[1] docketed as Crim. Case No. 96-0315. The trial court found him guilty of rape and sentenced him to death, applying Art. 335 of the Revised Penal Code, as amended by Sec. 11 of RA No. 7659.

The records disclose that sometime in 1994 ten-year old Crisanda Cabugza Calderon, the complaining witness, together with her siblings Jason and Cristy, was entrusted by her parents Francisco Calderon and Emy Cabugza to the custody of their long time friends, the spouses Fernando and Jocelyn Ramilla, then residing at Block 26, Lot 10, Bernabe Compound, Pulang Lupa, Las Piñas. Francisco and Emy provided for the children's subsistence with Fernando supplementing his support for Crisanda by giving her *pasalubong* every week out of his salary as construction worker.

On 29 June 1996, at about ten o'clock in the evening, while they were alone inside their house, Fernando bluntly told Crisanda to remove her clothes including her panty and to lie down on the *papag*. Then he put some saliva over her genitalia to make it damp and slippery so he could insert his penis into her vagina. After the preliminaries he placed himself on top of her and thrust his organ into her *pudendum*. As a result, she bled and suffered pain. His lust having been satiated, he warned her to keep silent otherwise he would kill her.

Crisanda was raped a number of times that month of June although she could not remember exactly how many times she was abused. All those incidents happened within the confines of the Ramilla house which was her home for two (2) years.

After June 29 Fernando attempted to rape Crisanda again. However, before he could have sex with her she told him that she would urinate first. At that juncture, Fernando's wife Jocelyn arrived and Crisanda broke down. She told Jocelyn everything. On 6 July 1996 Crisanda was brought by her father and a sister to the National Bureau of Investigation for medical examination. The medico-legal report disclosed the following findings and conclusions: *Genital Examination*: Labia majora and minora, gaping. Fourchette, tense. Vestibular mucosa, contused on all sides. Hymen, originally crescentic, short and thick, with a healing complete laceration at 7:00 o'clock position, edges of this are edematous, reddish. Hymenal orifice, measuring 1.2 cm. in diameter. *Conclusion*: No evident sign of any extragenital

physical injury noted on the body of the subject at the time of examination; a healing hymenal laceration present, consistent with sexual intercourse on or about the alleged date of commission; and, recent genital trauma present, consistent with the alleged date of infliction.^[2]

When the accused was to present his evidence in his defense, he moved that he be allowed to change his original plea of not guilty to guilty. However, considering that the evidence for the prosecution had already been received the trial court denied the motion. He was then required to present evidence but failed to do so. Thus, his case was deemed submitted for decision.^[3]

On 6 December 1996 Fernando Ramilla was sentenced to death by applying Art. 335 of the Revised Penal Code as amended by Sec. 11 of R.A. No. 7659. He was further ordered to indemnify Crisanda Cabugza Calderon in the amount of P100,000.00 and to pay the costs.

Underscoring the tender age of Crisanda and attempting to take advantage of it, Fernando now argues that such circumstance made her vulnerable to manipulation and external pressure from those who exercised authority over her, such that the possibility that her testimony was misguided is great. He also remonstrates that the order of the trial court submitting the case for decision after he failed to present evidence was premature due to the absence of an express waiver on his part thus resulting in denial of due process.

Let it be emphasized that with the failure of the accused to present any witness in his defense, the evidence for the prosecution becomes undisputed. The records fail to show that he ever assailed the propriety of the order of the trial court submitting the case for decision. Consequently, he cannot now argue against his conviction. However, in view of the gravity of the offense and the circumstance that automatic review by this Court of a death sentence is intended primarily for the protection of the accused, specifically to ensure its correctness,^[4] we shall nonetheless consider his arguments.

On the alleged vulnerability of Crisanda to "manipulation and external pressure," the Court observes that this claim has not gone beyond mere conceptualization. More important than her imputed vulnerability, Fernando should have established with concrete evidence the existence of such manipulation and external pressure that could have possibly misguided Crisanda. In this regard, we find no error committed by the trial court in giving full weight and credit to her testimony who in her child-like naiveté could not have concocted her narration in court on how she was sexually assaulted by the accused^[5]-

Q: Now, on June 29, 1996, at about 10 o'clock in the evening, do you remember where were you?

A: Yes, sir x x x x I was in Bernabe Compound, Pulang Lupa, Las Piñas, Metro Manila, sir.

Q: While you were there at that particular place, date and time, do you remember if there was any unusual incident that happened to you?

A: There was, sir.

Q: What was that incident?

A: Kuya Fernando inserted his penis into my vagina and my vagina was bleeding, sir. *Kuya* Fernando was the one who was taking care of me but he did that to me.

x x x x

Q: Now, this is very important. Please tell this Honorable Court how this accused abused you? Describe how he abused you.

A: Before he put his body on top of my body, he first told me to remove my clothes and my panty. After I removed my clothes and my panty, he told me to lie down. Then he put saliva over my vagina so that my vagina would be slippery and he could insert his penis into it.

Q: After placing his saliva on your vagina, what did he do next?

A: He went on top of me, sir.

Q: Then what happened next?

A: After putting his body on top of me, he tried to insert his penis into my vagina, sir.

Q: How did you feel with your private part when he went on top of your body?

A: It was very painful, sir.

Q: Why?

A: Because *ipinasok niya yong ano niya*.

Q: What was that *ano niya*?

A: *Idiniin niya ang kanyang titi sa ari ko*.^[6]

The youthful Crisanda maintained the consistency of her narration even in her cross examination. This is quite significant for the lone testimony of the victim in rape if credible, as in the present case, suffices to sustain conviction and the mere allegation that she is of tender age is not enough to disqualify, much less discredit, her as a witness. The rationale behind this ruling is the very nature of the offense where, oftentimes, the only evidence that can be adduced to establish the guilt of the accused is the offended party's testimony.^[7]

In other words, if we disallow the testimony of Crisanda on account of her tender age, we will in effect be foreclosing her right to seek justice. The offense was perpetrated with no persons present other than the offender and the victim. Recently, we reiterated that in rape cases we seldom find any disinterested person who was actually present when the offense was committed,^[8] and rape is

essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from prying eyes, and a prosecution for the crime usually commences solely upon the word of the offended woman herself, and conviction invariably turns upon her credibility as the People's single witness of the actual occurrence.^[9] To enlighten accused even more, we have sustained convictions for the same crime based on the credible testimonies of victims much younger than Crisanda, some at five years of age^[10] or even less. Needless to say, tender age by itself is not a factor in discrediting a witness.

Clearly, young Crisanda has no improper motive to impute to the accused such a grave and scandalous offense.^[11] In fact, prior to the sexual encounters, she was close to him since he was the one taking care of her, giving her *pasalubong* every week.^[12] It is revolting to the senses that such emotional closeness would soon shift to physical promiscuity by Fernando's design, the memories of which only the loss of sanity or life can effectively obliterate.

Corroborating and lending truth to the victim's account that she had been sexually assaulted, the examining physician on the basis of his medico-legal report testified^[13]-

Q: Please tell us what is Item No. 2 in your conclusion, tell us in layman's language?

A: Yes, sir. The second conclusion in my report described the hymen which is a fold of tissue creating the opening of the birth canal. The examination of this part showed a healing laceration. The characteristic of (these) edges of the tear (is) consistent in age with the alleged date of commission and also consistent with sexual intercourse, sir.

x x x x

Q: Mr. Witness continuing your genital examination you stated, hymen original crescentic, short and thick with a healing complete laceration at 7:00 o'clock position edges of (these) are edematous, reddish. Hymenal orifice measuring 1.2 cm. in diameter. Will you please explain further in layman's language?

A: The shape of the hymen would generally be round or ring like or round. Other hymen would (be) crescentic type it presented a tear which was existing up to the base which is termed as a complete laceration or tear it is limited at a 7 o'clock laceration if we will correspond (sic) to the face of the watch. The edges were swollen and reddish.

Q: What is the significan(ce) of these findings with Item No. 2 in your conclusion?

A: It will signify that the wound was in the process of healing corresponding to a period between about two days prior to the date of examination extending up to about a week, sir.^[14]